The appellant obtained a contract to construct the buildings, and he in turn entered into a sub-contract with the respondent for the performance of the work. A written agreement in Chinese was executed between them. The appellant's contention is that the work assigned to the respondent included the driving of piles, which the respondent disputed. The issue, therefore, to my mind devolves on the four Chinese characters in the agreement, a translation of which has been rendered by the Court Interpreter as being "construction work". The Commissioner seems to disagree with that translation and gives his own translation of those four characters as being "masonry work".

Section 98 of the Evidence Ordinance provides: "Evidence may be given to show the meaning of foreign expressions.....". If it is intended to impugn the accuracy of the Court Interpreter's translation, evidence has to be called to show what the correct translation should be. The Commissioner may himself desire to give evidence.

For the above reasons I order that the matter be remitted to the lower Court for fresh hearing by way of suit. Costs of this appeal to abide the result of the suit.

Re-hearing ordered.

Solicitors for the appellant: *Pillai, Lim, Lee & Hwang.*

SOONG CO. LTD. & ANOR. v. TEOH CHENG SIM (f)

[A.C.J. (Spenser Wilkinson J.) October 21, 1955]

[Penang — Civil Appeal No. 3 of 1955]

Landlord & Tenant — Building erected upon land belonging to another person — Bona fide title — Building erected after 31st January 1948 — Meaning of "premises" — Control of Rent Ordinance, 1948.

This was an appeal from an order of possession made in the Sessions Court in respect of a piece of land on which a building stood. The building was erected on some date after the 31st January 1948 with the consent of the landlord and was admittedly immovable. The 1st defendant admitted that he was the tenant of the land but claimed he was the owner of the building. The 2nd defendant claimed to be the tenant of the 1st defendant in respect of the building. The tenancy of the 1st defendant was terminated by a month's notice to quit. On the appeal it was argued (1) that there was a *bona fide* dispute as to title and therefore the Sessions Court had no jurisdiction to hear the case; (2) that even if the Sessions Court had jurisdiction, the decision was wrong because the premises were within the meaning of the Control of Rent Ordinance, 1948, and the plaintiff had not obtained the permission of the Assessment Board.

Held: (1) the term "premises" in the Control of Rent Ordinance does not include land upon which a building was completed after the 31st January 1948 and therefore in this case the plaintiff was entitled to possession without reference to the Control of Rent Ordinance, 1948; (2) when any building (apart from trade fixtures and certain types of movable structure in respect of which a local custom to treat them as movables might be allowed to be proved) is erected upon land the title of the building is inseparable from the title of the land; (3) it is not sufficient in order to constitute a *bona fide* dispute as to title to make a bare allegation that part of the premises belong to the tenant — there must be some substance in the allegation before it can be said to be a *bona fide* dispute; (4) in this case the learned President was right in holding upon the pleadings and the admitted facts that there could be and was no question of title before him.

Cases referred to:—

(1) *Toh Chin Kwan v. Ng Ah Kak* (1955) M.L.J. 151.

(2) *Harnam Singh v. K. V. Sambasivam* (1954) M.L.J. 251.

(3) *Ramsden v. Dyson* (1866), 1 H.L. 129.

(4) *Plimmer v. Mayor etc. of Wellington* 9 A.C. 699.

(5) *Chua Sai Ngoh v. Beh Ai Meng* (1955) M.L.J. 167.

(6) *Hiew Kim Swee v. G. C. Gomez* (1955) M.L.J. 170.

CIVIL APPEAL.

Chang Min Tat for the appellants.

I. K. Meek for the respondent.

Spenser Wilkinson J. : — This was an appeal from an order of possession given in the Sessions Court in respect of a piece of land in Province Wellesley on which stood a building known as No. 3958, Bagan Jermal. The building was admittedly erected on the land at some date after the 31st January, 1948 with the consent of the landlord and is admittedly immovable. It was also admitted in the defence that the 1st defendant was the tenant of the plaintiff in respect of the land in question, but it was alleged that the 1st defendant was the owner of the building and that the 2nd defendant was the 1st defendant's tenant in respect of the building. The 2nd defendant was in occupation of the building and it was admitted that the plaintiff knew this at least from September, 1954. The tenancy of the 1st defendant was terminated on the 31st January, 1955 by a month's notice to quit.

Two main points were argued on the appeal; first that there was a *bona fide* dispute as to title, so that the Sessions Court had no jurisdiction to hear the case; and secondly that even if the Sessions Court had jurisdiction its decision was wrong, because the premises were within the provisions of the Control of Rent Ordinance, 1948 and the plaintiff had not obtained the permission of the Assessment Board to apply to the Court for ejectment. I will deal first with the second point.

In the recent case of *Toh Ching Kwan v. Ng Ah Kak*[1] which was reported only a short time before this appeal came on for hearing, Wilson J. decided that although the definition of "premises" includes land it only includes the land upon which the building has been erected with the consent of the landlord but a building does not include a building completed after the 31st January, 1948 and that, therefore, "premises" does not include land upon which a building was completed in 1952. Whether or not I agreed with the decision in that case I should feel bound to follow it; but in fact, with respect, I entirely agree and would have reached a similar conclusion myself from the wording of the definition.

Subject, therefore, to the other grounds of apppeal it is clear that the plaintiff was entitled to possession without reference to the Control of Rent Ordinance, 1948. It was argued, however, that as the learned President had no jurisdiction his order was a nullity. It was said that there was a *bona fide* dispute as to title because the building and the land were under different ownerships and that the house belonged to the 1st defendant. Mr. Chang Ming Tat appeared to base his argument on the ground that the law of fixtures is subject to exceptions and that a building erected upon someone else's land does not necessarily become a part of the land so as to vest the title in the building in the owner of the land. I do not see how this part of the law can assist him. There is no evidence on the record to suggest that this building is a trade fixture and even if it were I agree with Mr. Meek's submission that this would not give the defendants a title to the building in the true sense of the word but would merely give them a right at the expiration of the term to remove the fixture. In the present case no objection was raised by the plaintiff in the Court below to the removal of the building by the defendants.

In my opinion when any building (apart from trade fixtures and certain types of movable structure in respect of which a local custom to treat them as movables might be allowed to be proved) is erected upon land the title of the building is inseparable from the title of the land. In this connection I would refer to the case of *Harnam Singh v. K. V. Sambasivan*[2] and the definition of "immovable property" contained in the Interpretation and General Clauses Ordinance, 1948 which imports that definition into all written laws. Mr. Chang Min Tat sought to rely upon an extract from the judgment in *Ramsden v. Dyson*[3], which was cited with approval in *Plimmer v. Mayor etc. of Wellington*[4] (at p. 710), but the latter part of that extract appears to me to be conclusive against his argument. It reads :—

> "If, on the other hand, a tenant being in possession of land, and knowing the nature and extent of his interest, lays out money upon it in the hope or expectation of an extended term or an allowance for expenditure, then, if such hope or expectation has not been created or encouraged by the landlord, the tenant has no claim which any Court of Law or Equity can enforce."

Nothing was pleaded in the defence of either of the defendants in this case to suggest that the landlord had created any expectation of any extended term or allowance for expenditure.

I have come to the conclusion, therefore, that there was no dispute as to title in this case. In my view it is not sufficient in order to constitute a *bona fide* dispute as to title to make a bare allegation that part of the premises belongs to the tenant. If it were sufficient to raise a *bona fide* claim to title for a defendant in his defence simply to say: "I dispute the title to the land", the jurisdiction of the Sessions Court to hear disputes as to immovable property would become entirely illusory. There must in my view be some substance in the allegation before it can be said to be a *bona fide* dispute. I think the learned President in the present case was right in holding that upon the pleadings and the admitted facts there could be and was no question of title before him.

There appears to me to be no substance in any of the other grounds of appeal. I hold, therefore, that the learned President had jurisdiction to decide the case and that his decision was right.

Since writing this judgment I have seen the September issue of the Malayan Law Journal in which are reported two cases which, it appears to me, virtually conclude the questions to be decided in this case in the sense in which I have decided them. The first of these cases in *Chua Sai Ngoh v. Beh Ai Meng*[5] where it was held in a case where the

defendant contended that the plaintiff was only the owner of the land but not of the houses, the houses in questions were part of the land in which they stood and were thus the property of the proprietor of the land. The conclusion I have arrived at in the present appeal appears to me to be entirely in accordance with that decision.

The other case is *Hiew Kim Swee v. G. C. Gomez*[6] which deals with the other point raised before me as to what is a *bona fide* question of title. Here again the opinion I have expressed in this judgment appears to be entirely in accordance with the decision of Thomson J.

Had it been possible, therefore, for these two cases to be cited before me I should have followed them and I should have reached the same conclusions. I would only add, in view of the fact that *Hiew Kim Swee's*[6] *case* dealt with a Magistrate's jurisdiction, that in my view section 71 of the Courts Ordinance, which deals generally with any action or suit before a Sessions Court, does not affect the construction which has been placed by Thomson J. on sub-section (4) of section 70.

The appeal is, therefore, dismissed with costs.

Appeal dismissed.

Solicitors: *Lim, Lim & Oon; Presgrave & Matthews.*

SUPRAMANIAM v. KANTHASAMY

[A.Cr.J. (Spenser Wilkinson J.) October 15, 1955]

[Penang — Criminal Appeal No. 39 of 1955]

Criminal trial — Plea of guilty — Necessity of recording statement of facts.

In this case the appellant pleaded guilty on a charge of voluntarily causing hurt under s. 323 of the Penal Code. No statement of the facts were called for or recorded.

Held: the Courts have frequently laid down that upon a plea of guilty the Magistrate must either take evidence or a statement of the facts and record them and as this was not done in this case the conviction must be quashed.

MAGISTRATE'S CRIMINAL APPEAL.

Jag-Jit Singh for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J. : — The appellant in this case was charged with voluntarily causing hurt to the respondent under section 323 of the Penal Code.

Upon his first appearance before the Magistrate's Court he claimed trial but upon a subsequent appearance he pleaded guilty.

The learned Magistrate recorded the plea and convicted him thereon. No statement of the facts, however, was called for or recorded and the appellant alleges that had the facts been outlined it would have been apparent that he did not intend to plead guilty to the charge.

The Courts have very frequently laid down that upon a plea of guilty the Magistrate must either take evidence or a statement of the facts and record them. As this had not been done in this case I quashed the conviction and remitted the case to the Magistrate for retrial.

Retrial ordered.

PAPATHY v. PUBLIC PROSECUTOR

[C.A. (Mathew C.J., Spenser Wilkinson and Hill JJ.) October 12, 1955]

[Ipoh — F.M. Criminal Reference No. 2 of 1955]

Criminal Procedure — Joint trial of cross-summonses — Whether this is an illegality or irregularity — Criminal Procedure Code (Cap. 6), ss. 170 & 422 — Courts Ordinance, 1948, s. 34.

This was a criminal reference under s. 34 of the Courts Ordinance, 1948, on a certificate of the Public Prosecutor. The point raised for determination was whether the joint trial of cross-summonses is an illegality or an irregularity.

The procedure adopted by the learned Magistrate was to hear one of the two cases, i.e. PP. 2080/53 first. The complainant and his witnesses gave evidence and they were cross-examined by Counsel for the defence. At the close of the case for the prosecution the learned Magistrate made the following note — "Complainant in PP. 7/54 to state her case and answer the charge". The two complainants in that case and one of the defence witnesses were then examined and cross-examined by Counsel for the complainant in case PP.2080/53. The learned Magistrate then found the present appellants who were the accused in case PP.2080/53 guilty.

Held: the procedure followed by the Magistrate was not in accordance with the provisions of the Criminal Procedure Code and therefore the trial was bad and cannot be cured by recourse to s. 422 of the Code.

Cases referred to :—

(1) *Pulukuri Kotayya v. King-Emperor* 21 I.A. 65.

(2) *Dhako Singh v. Emperor* A.I.R. 1920 Patna 177.

(3) *Queen v. Sheikh Bazu* (1867) 8 W.R. 47.

(4) *Sahadev Ahir v. King-Emperor* 8 C.W.N. 344.